

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JULIAN LEE NELSON,

Defendant-Appellant.

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UNPUBLISHED

January 8, 2009

No. 281662

Calhoun Circuit Court

LC No. 2007-001125-FC

Before: Murray, P.J., and Markey and Wilder, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of armed robbery, MCL 750.529, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to consecutive sentences of 225 to 480 months' imprisonment for the armed robbery and 24 months' imprisonment for his felony-firearm conviction. Defendant appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The facts presented at trial establish that defendant was at a drug house at 103 Arthur in Battle Creek, Michigan on December 19, 2006, waiting for the victim and Ryan Aggers to arrive at the home to sell marijuana. Eyewitnesses established that defendant told his girlfriend, Alicia Reed, that when the victim came to the front door, he intended to snatch the marijuana and slam the door on the victim. When the victim and Aggers entered the home with a clear gallon size bag of marijuana, defendant stood behind the front door with a mask on his face and a gun in his hand. Defendant made a move to close the door; the victim then yelled an acknowledgment that defendant had a mask on, and turned and fled from the residence. Defendant then opened the door and followed the victim outside, firing at him with his gun. The victim was found by police with the gallon size bag of marijuana in his hand and with approximately \$10,000 on his person. The victim was shot five times in the back. Shell casings and fragments were recovered from multiple weapons. Defendant fled from the scene; he used his cellular telephone to send a two-way message to his friend, Antonio Reed, in which he stated, "I think I shot somebody." Defendant argues that his convictions for armed robbery and felony-firearm should be reversed, and his motion for a directed verdict should have been granted because there was insufficient evidence presented by the prosecution to support that he was in the course of committing a larceny or that he intended to commit a robbery. We disagree.

The standard of review for a sufficiency of the evidence claim is de novo, and the Court must review "the evidence in a light most favorable to the prosecution and determine whether

any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt.” *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). Sufficiency of the evidence claims are subject to a highly deferential standard of review; the standard requires this Court to respect the trier of fact’s determinations regarding proper inferences that may be drawn from the evidence and to determine the weight to give those inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). Similarly, when reviewing a trial court’s decision on a motion for a directed verdict, this Court reviews the record de novo to determine whether the evidence, “when viewed in a light most favorable to the prosecution, could persuade a rational trier of fact that the elements of the crime charged were proved beyond a reasonable doubt.” *People v Gillis*, 474 Mich 105, 113; 712 NW2d 419 (2006).

The armed robbery statute, MCL 750.529, provides:

A person who engages in conduct proscribed under section 530 and who in the course of engaging in that conduct, possesses a dangerous weapon or an article used or fashioned in a manner to lead any person present to reasonably believe the article is a dangerous weapon, or who represents orally or otherwise that he or she is in possession of a dangerous weapon, is guilty of a felony punishable by imprisonment for life or for any term of years. If an aggravated assault or serious injury is inflicted by any person while violating this section, the person shall be sentenced to a minimum term of imprisonment of not less than 2 years.

The cross-referenced section, MCL 750.530, provides in relevant part:

(1) A person who, in the course of committing a larceny...uses force or violence against any person who is present, or who assaults or puts the person in fear, is guilty of a felony...(2) As used in this section, "in the course of committing a larceny" includes acts that occur in an attempt to commit the larceny, or during commission of the larceny, or in flight or attempted flight after the commission of the larceny, or in an attempt to retain possession of the property.

Under the plain language of the armed robbery statute, the phrase “in the course of committing a larceny” includes acts that occur in an attempt to commit a larceny, during its commission, and ones that occur in flight after the larceny. MCL 750.530. Thus, the armed robbery statute does not require that a felonious taking or completed larceny occur; it requires that the use of force or the placement of a person in fear, occur “in the course of committing a larceny” and with the use of a dangerous weapon, or an object reasonably believed to be a dangerous weapon. MCL 750.529; MCL 750.530. See also *People v Chambers*, 277 Mich App 1, 8; 742 NW2d 610 (2007). Viewed in a light most favorable to the prosecution, the evidence and reasonable inferences established the elements of armed robbery beyond a reasonable doubt. Eyewitnesses established that defendant was armed with a gun and poised behind the front door with a mask covering his face when the victim entered the drug house carrying a bag of marijuana. The jury’s determination that defendant intended to steal the marijuana was supported by the circumstantial evidence that defendant put on a mask and told Alicia “Man, when that motherf---ker comes to the front door, I’ll snatch that and I’ll slam the door on him.” It was clear that defendant placed the victim in fear. The victim yelled “He’s got a f---king mask on” and turned and fled from the drug house. It was established at trial that defendant both attempted to close the door on the victim and later, that defendant followed the victim and fired

his gun when the victim attempted to escape. When asked by the police what defendant believed transpired at the residence at 103 Arthur, defendant said he “had heard” that it was a “robbery gone bad” and that he believed Alicia “set up the robbery.” Further, the fact that defendant left the marijuana in the street after the victim was shot is irrelevant because an actual taking of property is not required for a conviction under the armed robbery statute. We affirm defendant’s conviction.

Additionally, MCL 750.227b provides in relevant part that “(1) A person who carries or has in his or her possession a firearm when he or she commits or attempts to commit a felony...is guilty of a felony, and shall be imprisoned for 2 years.” The facts established that the victim was shot in the back five times and that defendant attempted to steal the victim’s marijuana when he entered 103 Arthur. An eyewitness testified that defendant was armed with a weapon when the victim arrived at the drug house, and that defendant fired at the victim. Defendant’s text message to his friend acknowledged that he believed he shot someone. It was a reasonable inference for the jury to conclude that defendant possessed a weapon during the attempted robbery and shooting of the victim, and that a weapon was accessible and available to him during the course of a felony, the armed robbery. *People v Williams*, 198 Mich App 537; 499 NW2d 404 (1993). Defendant’s felony-firearm conviction is affirmed.

Affirmed.

/s/ Christopher M. Murray

/s/ Jane E. Markey

/s/ Kurtis T. Wilder